



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 00899-02
16 October 2002

L [REDACTED] CHC USNR
[REDACTED]
[REDACTED]

Dear Lieutenant [REDACTED]

This is in reference to your application of 1 September 2001 for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You made a new request to remove your fitness report for 1 February to 20 July 1996. You also requested consideration by a special selection board, and impliedly requested removal of your failures of selection by the Fiscal Year (FY) 00 through 03 Staff Lieutenant Commander Selection Boards. In your previous case, docket number 1969-99, your implied request to remove your failure by the FY 00 promotion board was denied on 18 November 1999.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your current application on 10 October 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, the Board's file on your prior case, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 24 August 2002, a copy of which is attached. The Board also considered your letter dated 4 October 2002 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Your more favorable fitness reports for other periods did not convince them that the contested report warranted removal. Since the Board found no defect in your performance record, they still had no grounds to remove your failure of selection by the FY 00 Staff Lieutenant Commander Selection Board, nor did they have grounds to remove your failures of selection by the FY 01, 02 or 03 promotion boards or grant you a special selection board. In view of the above, the Board again voted to deny relief. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
PERS-311
24 August 2002

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED] USN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 February 1996 to 20 July 1996.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member did not desire to submit a statement.

b. The report in question is a Detachment of Individual/Regular report. The member alleges the report was not an accurate evaluation of his performance and may have been intentionally designed to derail his possibilities for promotion and end his naval career.

c. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; he must provide evidence to support the claim. I do not believe Lieutenant [REDACTED] done so. The fitness report itself represents the opinion of the reporting senior.

d. The member claims his new department head (command chaplain) that did not know him prepared the fitness report. It is appropriate for the reporting senior [REDACTED] to obtain and consider information from the member's department head in developing a fitness report, but the reporting senior signed the report and had the overall responsibility for assigning grades and comments.

e. The Navy Achievement Medal awarded the member which covers his tour of duty with the command does not mean that the fitness report is in error.

f. The member has included two letters of support. While these comments add insight and reflect favorably on the member, they do not show that the fitness report was in error.

g. Lieutenant [REDACTED] states the report in question displayed a negative trend and severely impacted his competitiveness with his peers and he has failed selection three times. The fact that the member perceives the report to be career damaging is not sufficient reason to remove a fitness report.

h. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.



Performance
Evaluation Branch